

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 40 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 6 : No

VASTUPAL RATILAL SHAH

Versus

HEIRS OF GANDABHAI KALIDAS

Appearance:

MR RN SHAH for Petitioners
MR SURESH C SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/06/1999

ORAL JUDGEMENT

1. The appellants, who are original defendants, have filed this appeal under Section 96 of the Code of Civil Procedure, challenging judgment and decree dated November 30, 1978, passed by the learned Civil Judge (S.D.), Surat, in Special Civil Suit No.142 of 1975.

2. The original plaintiff, Gandabhai Kalidas, who expired during pendency of this appeal on November 19, 1993, filed Special Civil Suit No.142 of 1975 against the defendants-appellants for possession of property bearing No.3933, of Ward No.2, situated in Khangad Sheri, Surat, (hereinafter referred to as 'suit property' for the sake of brevity). As per the case of the deceased respondent, an agreement to sell was entered into between Ramanlal Nagindas and Rameshchandra Chhotalal and said Ramanlal Nagindas had sold his right to purchase the suit property to the deceased-respondent. As Rameshchandra Chhotalal did not execute sale deed and hand over possession of the suit property, the deceased respondent and Ramanlal Nagindas had filed Regular Civil Suit No.178 of 1962 for specific performance in the Court of learned Civil Judge (J.D.), Surat. A compromise was arrived at on August 4, 1964 and, as per the said compromise, a decree came to be passed to the effect that Rameshchandra Chhotalal had to execute sale deed in respect of the suit property in favour of the respondent-deceased. As Rameshchandra Chhotalal did not execute sale deed, the deceased-respondent filed Regular Darkhast No.9 of 1965 against Rameshchandra Chhotalal on the basis of compromise arrived at between the parties in Regular Civil Suit No.178 of 1962. Kusumben Nathalal, wife of Rameshchandra Chhotalal, and her minor sons, namely, Pankaj and Satish, filed declaratory suit, bearing R.C.S. No.825 of 1960, to the effect that they had two Ana's share in the suit property and, in that suit, a stay was obtained against Darkhast No.9 of 1965. According to the deceased-respondent, the suit was dismissed by the trial court and Kusumben filed Regular Civil Appeal No.368 of 1967 challenging the decree passed by the trial court. That appeal also came to be dismissed by the District Court. Kusumben and her minor sons filed Second Appeal No.685 of 1968 in the High Court of Gujarat which came to be withdrawn. When the appeal was withdrawn, Darkhast No.9 of 1965 was pending in the trial court and at that time Rameshchandra Chhotalal had carried out repairs in the suit property and given possession of the suit property illegally to other persons. Therefore, the deceased-respondent filed Regular Civil Suit No.89 of 1965 and an injunction was obtained against Rameshchandra Chhotalal restraining him from inducting persons in the suit property as tenants. In the said suit, a compromise was arrived at on July 11, 1967. Rameshchandra Chhotalal filed Regular Civil Suit No.1213 of 1961 against the deceased-respondent for possession of the ground floor of the suit property on the ground of 'non-user'. The said suit came to be dismissed by the trial court on September

16, 1963. Rameshchandra Chhotalal filed Regular Civil Appeal no.268 of 1963 in the District Court, Surat, which came to be allowed by the Appellate Court on October 20, 1964. It appears that, thereafter, Rameshchandra Chhotalal filed execution proceedings against the deceased-respondent and obtained vacant possession of the ground floor of the suit property. As per the averments made in the plaint, Rameshchandra Chhotalal had obtained possession of the ground floor of the suit property from the deceased-respondent on June 25, 1961. It may be stated that, at the relevant time, Darkhash No.9 of 1965 was pending in the Civil Court for execution. As Rameshchandra Chhotalal had tried to induct persons on the ground floor of the suit property, the deceased-respondent filed Regular Civil Suit No.731 of 1969 on June 27, 1969 in the Court of Civil Judge (J.D.), Surat, restraining Rameshchandra Chhotalal from inducting other persons as tenants in the suit property. Ad-interim injunction came to be issued against Rameshchandra Chhotalal on June 30, 1969. A compromise was arrived at on February 27, 1971 between Laxmiben Rameshchandra Chhotalal, Bai Jakor, mother of Rameshchandra Chhotalal, and two minor sons of Rameshchandra Chhotalal, namely, Satish and Pankaj, on the one side and the deceased-respondent on the other side that on payment of agreed amount, as stated in the said compromise, sale deed of the suit property was to be executed in favour of the deceased-respondent. As no sale deed was executed by Rameshchandra Chhotalal, Darkhash No.9 of 1965 was proceeded further and the Court appointed a Court Commissioner to execute sale deed of the suit property in favour of the deceased-respondent. Pursuant to the order of the Court in Darkhash No.9 of 1965, sale deed in respect of the suit property in favour of the deceased-respondent came to be executed on January 18, 1975. After the sale deed was executed through the Court Commissioner, the deceased-respondent on January 27, 1975 withdrew Regular Civil Suit No.739 of 1969 which was filed by him against Rameshchandra Chhotalal for injunction. After execution of the sale deed, the deceased-respondent served notices to the defendants (appellants herein) on March 3, 1975 asking the appellants to hand over vacant possession of the suit property. The appellants, by their reply dated April 12, 1975, contended that they were lawful tenants of the suit property and, therefore, they were not liable to hand over the possession of the suit property. The deceased respondent, thereafter, filed Special Civil Suit No.142 of 1975 against the appellants for vacant possession of the suit property and claiming mesne profits for illegal occupation of the suit property.

3. The appellants filed their written statement at Exh.14, inter alia, contending that the deceased-respondent had no right to file suit and the suit was not tenable as special civil suit, and, as they were tenants of the suit property, the suit would be governed by the provisions of the Rent Act and, therefore, the learned Civil Judge (S.D.), had no jurisdiction to hear the suit. It was further contended that the original owner had filed Regular Civil Suit No.41 of 1974 against the appellants and in that suit, standard rent of the suit property was fixed at Rs.15/per month. It was also contended that if Ramanlal Nagindas had executed any agreement, then the said contract or agreement did not affect the rights of the appellants as tenants. It was pleaded that the appellants were not parties in Regular Civil Suit No.178 of 1962 and, if any compromise was arrived at, it was not binding to them. The appellants also pleaded that in the earlier proceedings they were not parties and, therefore, the judgments and decrees passed in the earlier proceedings were not binding to them and would not affect the status as tenants in the suit property. The appellants also contended that the deceased-respondent had become owner of the suit property after the year 1964 and, therefore, as per the provisions of the Rent Act, the original plaintiff cannot get possession of the suit property from the appellants. It was pleaded that the original plaintiff was not entitled to claim any mesne profits and the suit be dismissed with costs.

4. On the basis of the pleadings of the parties, the trial court framed issues at Exh.16. The plaintiff in support of his case examined himself at Exh.30, (2) Khaliulln Karimulla Kadugadh, at Exh.61, (3) Bhikhubhai Maganbhai, at Exh.63, and (4) Ishwarlal Kuberdas Patel at Exh.61. The plaintiff also produced voluminous documentary evidence with regard to previous proceedings, which had taken place between himself and Rameshchandra Chhotalal and other family members.

5. The defendants, in support of their case, examined Vastupal Ratilal Shah at Exh.85 and Rameshchandra Chhotalal Jariwala at Exh.137. The defendants also produced voluminous documentary evidence, reference to which will be made as and when found necessary in the course of this judgment.

6. The trial court, on appreciation of oral as well as documentary evidence produced on record of the case, came to the conclusion that possession of the appellants

in the suit property was illegal. The trial court negatived the appellants' case that they were tenants in the suit property. The trial court concluded that it had jurisdiction to try the suit in the present form as the suit was not between the land-lord and the tenant and the suit was based on title against the defendants who were in illegal occupation of the suit property. The trial court held that the doctrine of lis pendens, as enunciated in Section 52 of the Transfer of Property Act, 1882 ('Act' for short) would be applicable in the present case and, therefore, the deceased respondent was entitled to possession of the suit property from the appellants. On the basis of the abovereferred to conclusion, the trial court directed the appellants to hand over possession of the suit property to the deceased respondent. The trial court also directed the appellants to pay Rs.388 as mesne profits to the deceased respondent. The trial court further directed the appellants to pay Rs.2 per day by way of mesne profits from the date of filing of the suit till possession is handed over to the respondents. Pursuant to the above conclusion, a decree came to be passed in favour of the deceased respondent, which has given rise to filing of this appeal by the appellants.

7. Mr. R.N. Shah, learned advocate for the appellants, and Mr.S.C.Shah, learned advocate for the respondents, who are heirs of deceased respondent-Gandabhai Kalidas, have taken me through the entire evidence produced on the record of the case. The learned advocate for the appellants has vehemently submitted that the appellants were not parties in the previous proceedings and, therefore, the orders passed in those proceedings were not binding to them. It is further contended that the deceased respondent became owner of the suit property only on January 18, 1975 when the sale deed was executed in his favour by the Court Commissioner. It is vehemently argued by the learned advocate for the appellants that the appellants had become tenants of the suit property in the year 1969 and, therefore, the doctrine of lis pendens would not be applicable. It is further submitted by the learned advocate for the appellants that the appellants were paying rent regularly to Rameshchandra Chhotalal and, therefore, the trial court erred in passing decree of mesne profits against the appellants. It is submitted that the appellants were not in illegal occupation of the suit property and therefore no decree for mesne profits could have been passed against them.

8. Mr. S.C. Shah, learned advocate for the respondents, contended that the deceased respondent, Gandabhai Kalidas, had purchased the rights of Rameshchandra Chhotalal in the agreement to sale which was entered into between Ramanlal Nagindas and Rameshchandra Chhotalal in the year 1962. It is submitted that as Rameshchandra Chhotalal did not execute sale deed of the suit property, Ramanlal Nagindas and deceased respondent had filed Regular Civil Suit No.178 of 1962 in the Court of Civil Judge (J.D.), at Surat, for specific performance of the agreement. It is submitted that the suit and the execution proceedings were pending in the Court till the year 1975. The learned advocate for the respondent also pleaded that the deceased respondent had also filed suit, being Regular Civil Suit No.731 of 1969, against Rameshchandra Chhotalal restraining him from inducting tenants in the ground floor of the suit property in which an ad-interim injunction was issued against Rameshchandra Chhotalal and he was restrained from inducting tenants in the suit property. It is vehemently contended that the proceedings of that suit were also alive till January 21, 1975, when the sale deed came to be executed in favour of the deceased respondent on January 18, 1975. It is pleaded that the appellants were illegally inducted as tenants by Rameshchandra Chhotalal in the suit property so as to deprive the deceased respondent of the possession of the suit property. It is lastly submitted that Rameshchandra Chhotalal had inducted the present appellants in the suit property which was subject matter of Civil Suit No.178 of 1962 and Darkhast No.9 of 1965 as well as Civil Suit No.731 of 1969 and, therefore, doctrine of lis pendens would apply to the present proceedings, and, under the circumstance, right of the deceased respondent will not be affected in claiming possession of the suit property.

9. Submission of the learned advocate for the appellants that doctrine of lis pendens would not apply to the facts of this case, is devoid of any merits and deserves to be rejected. To appreciate the submission of the learned advocates for the appellants and the respondent, it would be expedient to refer to the provisions of Section 52 of the Act, which reads as under:

"52. Transfer of property pending suit relating thereto.- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable

property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

Explanation to section 52 of the Act clearly provides that pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or institution of the proceeding in a court of competent jurisdiction shall continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree has been obtained. As discussed earlier, the deceased respondent and Ramanlal Nagindas derived interest in the suit property in the year 1962 by virtue of sale agreement dated January 1, 1962 executed between Ramanlal Nagindas and Rameshchandra Chhotalal. As Rameshchandra Chhotalal did not execute sale deed, Civil Suit No.178 of 1962 came to be filed by the deceased respondent and Ramanlal Nagindas and in that suit a compromise was arrived at on August 4, 1964 and it was agreed that Rameshchandra Chhotalal should execute sale deed in favour of the deceased respondent for a consideration of Rs.39,100/- on or before November 5, 1964. As per the terms of the compromise, it was agreed that, if Rameshchandra Chhotalal failed to execute sale deed on or before November 5, 1964, the deceased respondent can get executed the sale deed by depositing the amount of consideration in the Court. As Rameshchandra Chhotalal did not act in accordance with the terms of the compromise, the deceased respondent filed Darkhast No.9 of 1965 in the Court of Civil Judge (J.D.), Surat. In the above darkhast, objections were raised by Rameshchandra Chhotalal which came to be rejected by the Executing Court on February 16, 1965. The judgment debtor, i.e. Rameshchandra Chhotalal preferred an appeal, being Civil Appeal No.43 of 1971, in the District Court, Surat, which came to be dismissed on August 31,

1971. The judgment debtor in Darkhast proceedings had filed Application Exh.68 on March 3,1971 that, as there was new agreement between the parties on February 27, 1971, i.e. after passing of the order of the Executing Court on February 16, 1971, the present darkhast proceedings cannot be continued. The objections of the judgment debtor, i.e. Rameshchandra Chhotalal, were negatived by the Executing Court by passing order dated September 12, 1973. The Executing Court, in its order Exh.36, had observed that the said agreement of February 27, 1971 was not satisfied as per the provisions of Order 21 Rule 21(2) and (3) of the Code of Civil Procedure. The Executing Court further observed in the order that in the agreement dated February 17, 1971, there was a recital that "the decree holder is entitled to continue and prosecute Darkhast No.9 of 1965 further". The Executing Court, in its final order, directed the decree holder, i.e. the deceased respondent to prepare a draft (in duplicate) of the document of sale in accordance with the terms of decree and deliver the same to the Court on or before September 19, 1973 for preparation of the draft of sale deed. Advocate Mr. Dineshbhai Vinubhai Mandirwala came to be appointed as Court Commissioner to get executed the sale deed in favour of the deceased respondent in respect of the suit property and, ultimately, the sale deed was executed by the Court Commissioner on January 18, 1975. After execution of the sale deed Exh.54 on January 18, 1975, the deceased respondent had, on January 21, 1975, withdrawn Civil Suit No.731 of 1969 which was filed against Rameshchandra Chhotalal for an injunction restraining him from inducting any tenant in the suit property.

10. The resume as narrated above clearly goes to show that right from the year 1962 till January 1975, the suits and execution proceedings were pending with regard to suit property in the Court having competent jurisdiction. The suit, which was filed in the year 1962, continued till 1975 when the sale deed came to be executed in favour of the deceased respondent. The abovereferred to proceedings were inconclusive between the parties, Therefore, in my opinion, doctrine of lis pendens as contained in Section 52 of the Act, would govern the present proceedings. As per the say of the appellants, they had become so-called tenant of the suit property in the year 1969. The facts disclosed above clearly establish that in the year 1969 the proceedings were pending in the Court having competent jurisdiction and the subject matter of those proceedings was suit property.

11. The conduct of Rameshchandra Chhotalal in inducting appellants in the suit property as so-called tenants also deserves to be deprecated. As the record indicates that the deceased respondent was a tenant on the ground floor of the suit property and the suit for eviction was filed against him by Rameshchandra Chhotalal and he was evicted from the suit property in the year 1969. As noted earlier, even though the deceased-respondent was evicted from the suit property, agreement to sell was subsisting and there were darkhast proceedings pending in the competent court. Even though the deceased respondent had obtained injunction restraining Rameshchandra Chhotalal from inducting any person as tenant in the suit property by filing Civil Suit No.731 of 1969, Rameshchandra Chhotalal had flouted the orders of injunction and inducted appellants as tenants in the suit property. Rameshchandra Chhotalal had left no stone unturned to create difficulties in the way of the deceased-respondent in getting the sale deed executed and conferment of title of ownership of the suit property on the deceased-respondent. By inducting the appellants as tenants in the suit property during pendency of litigation, there was evil design in the mind of Rameshchandra Chhotalal that even after the sale deed was executed and title of ownership is conferred on the deceased-respondent, the deceased-respondent should not get vacant possession of the suit property.

12. In view of the aforesaid discussion, in my view, doctrine of lis pendens would be applicable to the facts of the present case.

13. Submission of the learned advocate for the appellants that the appellants were not parties to the proceedings and, therefore, the decisions by the courts in those proceedings will not bind them, is devoid of any merit. The appellants had derived tenancy rights illegally during pendency of the proceedings. Rameshchandra Chhotalal had no right to transfer the suit property in favour of the appellants as there was injunction issued by the competent court restraining him from inducting any person in the suit property. Therefore, even if the appellants had derived any status as tenant, such transfer or status cannot confer any right on the appellants, because of doctrine of lis pendens.

14. Submission of the learned advocate for the appellants that the appellants were not in illegal possession and they were occupying the suit property as tenants and, therefore, no decree for mesne profits could

have been passed against them, is also devoid of any merit and deserves to be rejected.

15. The appellant No.1 was examined before the trial court at Exh.85. It is evident from his oral deposition that in the beginning he was paying rent of Rs.1.50 to Rameshchandra Chhotalal in respect of the suit property. As there was a litigation in the Court, standard rent was fixed at Rs.75/- per month. The order of awarding the mesne profit by the trial court at the rate of Rs.2 per day of the suit property, from the date of filing of the suit till possession is handed over, cannot be said to be erroneous, as the appellants were occupying the suit property without paying any charges to the deceased-respondent. As noted earlier, the appellants were in illegal occupation of the suit property for which they are liable to pay mesne profits to the respondent. Therefore, the order of awarding the mesne profit by the trial court at the rate of Rs.2 per day of the suit property, from the date of filing of the suit till possession is handed over, deserves to be confirmed.

16. The contention of the learned advocate for the appellants that, as there was relationship of land-lord and tenant, the suit in the present form was not maintainable, since such dispute can only be decided by the Rent Court under the provisions of the Rent Act, also deserves to be rejected. The deceased respondent had filed suit based on title alleging that the appellants were in illegal occupation of the suit property and that they are trespassers. The averments and allegations made in the plaint generally determine the jurisdiction of the Court and, therefore, by no stretch of imagination, it can be said that the suit was governed by the Rent Act as there was relationship of land-lord and tenants between the respondent and the appellants. Therefore, the trial court has rightly rejected the contention that the Civil Court has no jurisdiction to try the suit. In my opinion, the finding of the trial court to that effect deserves to be confirmed. These were the only contentions raised by the learned advocate for the appellant and I do not find any merit in them. The appeal, therefore, deserves to be dismissed.

76. As a result of foregoing discussion, the appeal fails and is dismissed with costs.

(swamy)